

PT 99-25
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

WBEZ
ALLIANCE, INC,
APPLICANT

v.

ILLINOIS DEPARTMENT
OF REVENUE

No: 98-PT-0008
(96-16-900)

Real Estate Tax Exemption for
1996 Assessment Year

P.I.N: 17-10-217-0002-8020

Cook County Leasehold Parcel

Alan I. Marcus
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Ms. Kelly Keeling-Hahn of Klafter & Burke on behalf of the WBEZ Alliance, Inc.

SYNOPSIS: This proceeding raises the following issues: (1) does the WBEZ Alliance, Inc. (hereinafter the "applicant") qualify as an "institution of public charity" within the meaning of 35 ILCS 200/15-65; and (2) should applicant's leasehold interest in real estate identified Cook County Parcel Index Number 17-10-217-0002-8020¹ be exempt from 1996 real estate taxes under 35 ILCS 200/15-65, wherein all property owned by "institutions of public charity" is exempted from real estate taxation, provided that said property is "actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit."

The controversy arises as follows:

Applicant filed a Real Estate Exemption Complaint with the Cook County Board of (Tax) Appeals (hereinafter the "Board") on February 10, 1997. Dept. Group Ex. No. 1, Doc. A. The Board reviewed applicant's complaint and recommended to the Illinois Department of Revenue (hereinafter the "Department") that the requested exemption be denied. Dept. Group Ex. No. 1, Docs. C-1, C-2.

The Department subsequently adopted this recommendation in a determination dated November 20, 1997. Dept. Ex. No. 2. This determination found that the subject property was neither in exempt ownership nor in exempt use. *Id.* Applicant later filed a timely request for hearing as to this denial (Dept. Ex. No. 3) and thereafter presented evidence at a formal administrative hearing. Following submission of all evidence and a careful review of the record, I recommend that the leasehold not be exempt from 1996 real estate taxes.

FINDINGS OF FACT:

A. Preliminary Considerations

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Group Ex. No. 1 and Dept. Ex. No. 2.
2. The Department's position in this matter is that the leasehold is not in exempt ownership and not in exempt use. Dept. Ex. No. 2.
3. The subject property is located at 848 East Grand Avenue, Chicago, IL and is part of the complex commonly known as Navy Pier. Dept. Group Ex. No. 1, Docs A, B and C; Tr. p. 10.

1. The leasehold itself shall hereinafter be referred to as the "leasehold"; the property of which that leasehold is a part shall hereinafter be referred to as the "subject property."

4. The Metropolitan Pier and Exposition Authority (hereinafter the "Authority"), a taxing body created pursuant to The Metropolitan Pier and Exposition Authority Act, 70 **ILCS** 210/1 *et seq.* (hereinafter the "Act"), owns the fee interest in the subject property. Applicant Ex. No. 14; Administrative Notice.
5. The Authority's fee interest is not at issue in this proceeding but is exempt from real estate taxation under Section 5.2 of the Act, 70 **ILCS** 210/5.2. Dept. Group Ex. No. 5, Doc. A; Administrative Notice.
6. Applicant, a commercial-free public radio station, holds a leasehold interest in the subject property pursuant to a lease dated April 7, 1994.² The exempt status of this leasehold is currently at issue. Applicant Ex. No. 1.

B. Applicant's Organizational And Financial Structure

7. Applicant's inception dates to 1943, when it was formed as a part-time radio-broadcasting instrumentality of the Chicago Board of Education (hereinafter the "CBE") for purposes of transmitting lessons into the homes of polio-stricken children. Applicant Ex. No. 3.
8. Applicant became the sole Chicago affiliate of the National Public Radio Network (hereinafter "NPR") in 1972. It also maintained its part-time affiliation with the CBE until 1990. *Id.*
9. Applicant was incorporated under the General Not For Profit Corporation Act of Illinois until September 15, 1989. Its original Articles of Incorporation provide, *inter alia*, that: (1) its general corporate purposes are exclusively charitable, educational literary and scientific in nature; (2) its specific corporate purposes shall include,

without limitation, encouraging the broadcast of music, literary productions, news reports, lectures and discussions on subjects of interest to the community on non-commercial FM broadcasting stations which are exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code; (3) no part of the net earnings of the corporation shall inure to the pecuniary benefit of, or be distributed to, applicant's directors, officers, or other private persons except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its corporate purposes; and (4) upon dissolution of the corporation, applicant's board of directors (which govern its daily business affairs under the terms of its by-laws) shall first pay or make provision for payment of all corporate liabilities and then distribute any remaining corporate assets in such a manner, or to such organizations, as may then qualify as exempt from federal income tax under Section 501(c) (3) of the Internal Revenue Code. Applicant Ex. Nos. 4, 5.

10. Applicant's by-laws provide, *inter alia*, that: (1) its corporate affairs shall be governed by a board of directors; (2) that board shall consist of between 16 and 25 members; (3) the General Superintendent of the CBE (hereinafter the "General Superintendent") shall be a permanent member of the board of directors; and (4) the General Superintendent may chair the programming committee and may sit on or designate two additional directors to sit on one or more other committees of the board of directors which the General Superintendent so chooses. Applicant Ex. No. 5.

2. For details about the terms and conditions of this lease, *see*, Findings of Fact 22A-22N, *infra* at pp. 7-10.

11. Applicant became exempt from federal income tax under Section 501(a) of the Internal Revenue Code on April 9, 1990. The Internal Revenue Service granted this exemption, which remained in full force and effect throughout the 1996 assessment year, pursuant to its conclusion that applicant qualified as an organization described in Section 501(c)(3) of the Internal Revenue Code. Applicant Ex. No. 9.
12. Applicant became exempt from payment of Illinois Use and related sales taxes pursuant to an exemption granted by the Department on February 8, 1991. Applicant Ex. No. 8.
13. Applicant has no capital stock or shareholders. It does, however, have a membership that consists of anyone who makes a financial contribution. Applicant Ex. No. 13; Tr. p. 23.
14. Members do not receive any special privileges or status except that they receive an informational newsletter. Applicant distributes this same newsletter free of charge to anyone who visits its facility. Tr. p. 21.

15. Applicant's fiscal year runs from September 1 through August 31. Its sources of revenue for the fiscal year ended August 31, 1996 were as follows:

SOURCE	AMOUNT	% OF TOTAL³
Membership Contributions	\$2,971,402.00	44%
Capital Campaign Contributions	\$ 483,437.00	7%
Government Gifts & Grants	\$ 928,187.00	14%
Private Gifts & Grants	\$ 565,375.00	8%
Program Underwriting	\$ 878,262.00	13%
Investment Income	\$ 189,525.00	3%
Special Events	\$ 57,365.00	1%
Satellite and Other	\$ 104,146.00	2%
In Kind Services & Other Contributions	\$ 536,548.00	8%
TOTAL REVENUES	\$6,714,247.00	

Applicant Ex. No. 11.

16. Applicant's expenses for the same period were as follows:

EXPENSE	AMOUNT	% OF TOTAL
Program Services		
Programming, Production & Public Information	\$2,746,398.00	44%
Broadcasting	\$1,611,768.00	26%
Total Program Services	\$4,358,166.00	
Supporting Services		
Management & General	\$ 308,402.00	5%
Membership Development	\$1,155,626.00	19%
Fundraising	\$ 411,406.00	6%
Total Supporting Services	\$1,875,434.00	
TOTAL EXPENSES	\$6,233,600.00	
RECONCILIATION:		
Total Revenues	\$ 6,714,247.00	
Less Total Expenses	- \$ 6,233,600.00	
Excess Revenues over Expenses	\$480,647.00	

Id.

3. All percentages shown herein are approximations derived by dividing the amounts shown in the relevant category by the total revenues shown on the last line of the second column. Thus, \$2,971,402.00/\$6,714,247.00 = .4426 (rounded four places past the decimal) or 44%.

C. Applicant's Operations

17. Applicant is a 24-hour public radio station. It broadcasts a variety of commercial-free programs devoted to news, current events, talk shows, and jazz music.⁴ Applicant Ex. No. 2-A; Tr. p. 19.
18. Applicant airs news from the British Broadcasting Service weekday mornings between 4:00 a.m. and 5:00 a.m. Applicant Ex. No. 2A.
19. NPR supplies another part of applicant's weekday morning programming, with "Morning Edition" airing from 5:00 a.m. until 9:30 a.m. *Id.*
20. Applicant airs another NPR program, "All Things Considered," weekdays from 3:00 pm until 6:30 pm. *Id.*
21. Most of the remaining programs are produced locally. They include, *inter alia*, no fewer than four jazz forums, "Blues Before Sunrise," "Ray Suarez Talk of the Nation" and various "WBEZ Specials" that cover current events. *Id.*; Tr. p. 20.
22. Applicant broadcasts all of its programming free of charge throughout the public spaces of Navy Pier. It also has a regular audience of approximately 400,000 listeners per week. Tr. p. 22.
23. Applicant has 62 employees, including a general manager, 50 full-time employees and 12 part-time employees. Average salary for the 62 employees is \$32,394.00,⁵ with individual salaries ranging from \$95,000.00 for a full-time general manager to \$3,500.00 year for an unspecified part time employee. Applicant Ex. No. 6; Tr. p. 31.

4. For a sample program schedule, see, Applicant Ex. No. 2-A; For further information on applicant's programming, *see*, Applicant Ex. No. 2-B.

5. $62 \text{ positions} / \$2,008,415.00 \text{ (total salaries for the 62 positions)} = \text{average salary of } \$32,394.00 \text{ (rounded)}$. Applicant Ex. No. 6.

24. At least two full-time employees receive salaries of \$70,000.00. Two other full time employees receive salaries of \$54,000.00 or above. The remaining full-time salaries range from \$46,350.00 to \$21,000.00. Applicant Ex. No. 6.

D. Applicant's Leasehold Interest & Use of the Subject Property

25. Applicant holds its leasehold interest in the subject property pursuant to an agreement and lease executed April 7, 1994. This lease names the Authority as lessor, the applicant as lessee, and provides, in substance, as follows:

- A. The lease is to run for a term of 99 years;
- B. The lease term is expected⁶ to begin June 1, 1995;
- C. The leased premises consists principally of two separate "three-dimensional spaces" located "above and within" certain horizontal boundaries of Navy Pier;⁷
- D. Applicant is to construct an improvement on these three-dimensional spaces;
- E. This improvement is to be used as applicant's main studio;

6. From the text of the agreement and lease, it appears that the parties did not set a firm commencement date in order to anticipate and address any delays that may have arisen during the construction process, whether they be attributable to the Authority and its agents, which were responsible for overseeing and implementing entire reconstruction project as it related to the Navy Pier facility, or the applicant and its agents, which were responsible for constructing various improvements on the demised premises. *See*, Applicant Ex. No. 1.

- F. The main studio is in turn to be used for no purpose other than "conducting the business of ... a not-for-profit public radio station known as The WBEZ Alliance, Inc., which radio station shall conduct its broadcast operations from Navy Pier 24 hours per day, 365 day per year during the term of this lease ...[;]"
- G. Applicant is to use the airspace above the areas designated for its main studio, or such other space as may be mutually agreed upon, for: (1) satellite dishes, radio antennae, or towers and transmitters, mechanical and electrical equipment; and (2) a satellite dish and/or microwave radio antenna and mechanical equipment locations elsewhere on Navy Pier that the parties may designate by subsequent mutual agreement;
- H. The remaining portion of the demised premises consists of a separate but "reasonable amount of three dimensional space" within certain elevations located at Navy Pier;

7. For exact boundary and legal descriptions of the demised premises, *see*, Applicant Ex. Nos. 1, 1-A, 1-B, 1-C.

- I. Applicant is to use this portion of the demised premises for "stairway(s), elevator(s) and mechanical shaft" to connect the areas applicant was to use as its main studio;
- J. Applicant is not to pay cash rent;
- K. In lieu of cash rent, applicant is required to render in-kind broadcasting and promotional services to the Authority;
- L. Applicant is to perform these services on each calendar day of each year that the lease remains in effect;
- M. The services consist of making: (1) three announcements in each 24-hour time period (i.e. one in the morning, one in the afternoon and one in the evening) which indicate that applicant is broadcasting from Navy Pier; and (2) "one broadcast announcement of at least 10 seconds twice per 24-hour period in the morning (between 6:00 a.m.-9:00 p.m.) and evening (between 4:00 p.m.-7:00 p.m.)" that announce events or features at Navy Pier;
- N. In the event applicant fails to perform any of these services, it is then required to pay cash

rent according to the fair market value of the demised premises and its improvements.

Applicant Ex. Nos. 1, 1-A, 1-B, 1-C; Tr. pp. 11-17.

26. Applicant began broadcasting from its Navy Pier facility on September 15, 1995. It continued to broadcast from that location, and fulfill its service-related obligations under the lease, throughout the 1996 assessment year. Applicant Ex. No. 3.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has not demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting its leasehold interest in the subject property from 1996 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that this leasehold does not qualify for exemption under 35 ILCS 200/15-65 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo v. Rose, 16 Ill. 2d 132 (1959). Moreover, the General Assembly is not

constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

In furtherance of its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 **ILCS** 200/1-3 *et seq.* The provisions of the Code that govern disposition of the present matter are contained in the following excerpt from Section 15-65:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity[.]

35 **ILCS** 15-65.

It is well established in Illinois that a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill. 2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and, have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

I reiterate that exemption of the Authority's fee interest in the subject property is not at issue in this proceeding. That interest is exempt under Section 5.2 of the Metropolitan Pier and Exposition Authority Act,⁸ 70 **ILCS** 210/1 *et seq.*, of which I take administrative notice. Therefore, the limited issue before me is whether applicant's leasehold interest in the subject property qualifies for exemption from 1996 real estate taxes under Section 15-65 of the Property Tax Code.

8. Section 5.2 states that "[a] property of the Authority is exempt from taxation by the State or taxing units of the State". 35 **ILCS** 210/5.2.

In Children's Development Center v. Olson, 52 Ill. 2d 332 (1972) (hereinafter "Olson"), the Illinois Supreme Court held that leaseholds can be exempted if: (1) the lessor qualifies as an exempt entity; (2) the lessee also qualifies as an exempt entity; and, (3) the lessee uses the demised premises for purposes that would qualify as exempt if the lessee owed the allegedly exempt leasehold, provided that neither the lessor nor the lessee are profiting from the enterprise.

The Authority-lessor is a legislatively created taxing body that qualifies for exempt status under the terms of its enabling statute. However, the applicant-lessee is an Illinois not for profit corporation whose legal identity is, *ipso facto*, separate and distinct from that of the Authority. Consequently, applicant's exempt status, if any, depends on whether it qualifies as an "institution of public charity" within the meaning of Section 15-65 of the Property Tax Code.

That inquiry depends, in part, on application of the following definition:

charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

Crerar v. Williams, 145 Ill. 625, 643 (1893).

In Methodist Old People's Home v. Korzen, 39 Ill. 2d 149, 156 (1968) (hereinafter "Korzen"), the Illinois Supreme Court set forth five "distinctive characteristics" that effectuate this definition. These attributes are that all "institutions of public charity":

- 1) have no capital stock or shareholders;
 - 2) earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
 - 3) dispense charity to all who need and apply for it;
 - 4) do not provide gain or profit in a private sense to any person connected with it;
- and,

- 5) do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.

Id. at 157.

These attributes are not rigid requirements, but rather guidelines to be considered with an overall focus on whether the applicant serves the public interest and lessens the State's burden. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995). In this case, the Public Radio and Television Grant Act, 30 **ILCS** 745/0.01 *et seq.*, imposes a financial burden on the State to make certain operating grants available to non-commercial public radio stations. *See*, 30 **ILCS** 745/5.

Applicant probably receives some of its funding from these grants.⁹ Receiving these monies, however, does not relieve the State of its financial burden, which is to provide funding for these grants. Indeed, receiving such grants seems to increase that burden.

Applicant also does not relieve any other governmental burden associated with radio communication, an industry that is subject to Congressional regulation because it engages in interstate commerce and affects the public interest. Pulitzer Publishing Co. v. FCC, 94 F. 2d 249 (1937). However, Congress has entrusted its regulatory burden to the Federal Communications Commission, (hereinafter the "Commission"), which is authorized to license radio stations, regulate the terms and conditions under which they operate and enforce applicable regulations pursuant to 47 U.S.C.A. § 303.¹⁰

Applicant is subject to these regulations and must comply therewith in order to maintain its broadcasting license. As such, applicant imposes a regulatory burden on the Commission.

9. *See*, Finding of Fact 15, *supra*, at p. 15.

10. For a complete statement of the Commission's powers and duties in the context of radio broadcasting, *see*, 47 U.S.C.A. §§ 303(a) through (y)(2)(b).

This burden requires the Commission to perform certain oversight functions that are inherently governmental in nature, and therefore, can not be performed by members of the private sector such as applicant. Consequently, applicant can not absorb whatever costs the Commission may incur while fulfilling its regulatory mandate. In this sense, applicant's operations tend to increase, rather than decrease, governmental burdens associated with radio communication.

This point is important because there are no reported Illinois decisions that apply Korzen to public radio stations. However, appellate authorities in other jurisdictions have considered and rejected arguments that property owned and used by not-for-profit radio stations should be exempt from real estate taxes under similar criteria. In one case, High Line Radio Fellowship v. Montana Dep't. of Revenue, STP-1958-1 (1989), the Montana State Tax Appeal Board found that the radio station did not relieve the government of any burdens, such as feeding or clothing the poor. In another, Evangelical Covenant Church of America v. City of Nome, 394 P. 2d 882 (1964), an Alaskan appellate court expressed concern that granting the requested exemption would violate public policy by forcing non-exempt commercial radio stations to compete with those that enjoy the competitive advantage of exempt status.

One might argue that this concern does not extend to the present case because applicant does not obtain any of its revenues from commercial advertising. However, the decision not to accept such advertising can also be viewed a business decision. Therefore, applicant should not be afforded the competitive advantage of exempt status merely because its management chooses not to accept commercial advertising.

Applicant seeks to defeat the above conclusion by pointing out that it broadcasts its programming free of charge throughout the Navy Pier facility, and therefore, "dispenses charity to all who need and apply for it", as required by Korzen, *supra*. However, this argument rests on

the speculative assumption that those who receive the "charity" come to Navy Pier for the express purpose of hearing applicant's programming.

Such a scenario seems highly unlikely in light of the fact that Navy Pier contains numerous commercial establishments. Thus, applicant's "charity" is more accurately described as the incidental by-product of whatever non-exempt commercial pursuits its "beneficiaries" may pursue at those establishments.

Incidental acts of beneficence are legally insufficient to establish that applicant is "exclusively" or primarily a charitable organization. Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956); Morton Temple Association, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987); Albion Ruritan Club v. Department of Revenue, 209 Ill. App. 3d 914 (5th Dist. 1991); Pontiac Lodge No. 294 A.F. and A.M. v. Department of Revenue, 243 Ill. App. 3d 186 (4th Dist. 1993). For this and all the aforesaid reasons, that portion of the Department's determination which denied the leasehold exemption from 1996 real estate taxes on grounds that it was not owned by an "institution of public charity" should be affirmed.

In light of the above conclusion, it stands to reason that applicant's uses of the leasehold, all of which furthered its non-exempt operations, do not qualify as being "exclusively charitable" within the meaning of Section 15-65 of the Property Tax Code. Therefore, that portion of the Department's determination which denied the leasehold exemption from 1996 real estate taxes based on lack of exempt use should be affirmed..

WHEREFORE, for all the above-stated reasons, it is my recommendation that the leasehold identified by Cook County Parcel Index Number 17-10-217-0002-8020 not be exempt from 1996 real estate taxes.

Date

Alan I. Marcus
Administrative Law Judge